IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

Dilip Singh & anr. Vs. Mewar Carriers & ors.

S.B.CIVIL MISC. APPEAL NO.356/1994

Against the award dated 19.03.1994 made by the Motor Accidents Claims Tribunal, Bhilwara in Claim Case No.422/1992 (411/1990).

Date of Judgment : 20.09.2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.J.M. Bhandari for the appellants
Mr. L.D. Khatri for the respondent No.3.

BY THE COURT:

This appeal has been preferred by the claimants against the award dated 19.03.1994 made by Motor Accidents Claims Tribunal, Bhilwara in Claim Case No.422/1992 (411/1990) wherein the appellants sought compensation for accidental death of their father Kalu Singh; and the Tribunal, taking the age of the deceased at 60 years and his annual income at Rs.6,000/- per annum, has observed that the amount of Rs.25,000/- awarded to the claimants under no fault liability was sufficient compensation and has allowed Rs.300/-

towards costs of litigation. The claimants have assailed the award being too low and grossly inadequate and have sought enhancement.

A brief reference to the background facts would suffice. On 17.09.1990 deceased Kalu Singh, a pedestrian on Hamirgarh-Bhilwara road was hit by a jeep bearing registration No. RJE 711 belonging to non-applicant No.1, driven by non-applicant No.2 and insured with non-applicant No.3. Kalu Singh sustained several injuries and died about 4-5 hours after the accident in hospital. The claimants stated age of the deceased at 55 years and his earning from agriculture at Rs.25,000/- per annum and from a flourmill at Rs.6,000/- per annum. The claimants submitted that deceased was spending Rs.6,000/- on himself and was saving Rs.25,000/- and on that basis claimed compensation in the sum of Rs.4,00,000/-. On the pleadings of the parties, the Tribunal framed following issues:-

> "1. आया कि मृतक कालू सिंह की आयु 55 साल थी ?
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> 2. आया कि कालू सिंह की दुर्घटना में मृत्यु जीप चालक द्वारा जीप को गफलत व लापरवाही से चलाने के कारण हुई ?
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> 3. आया कि प्रार्थीगण क्षतिपूर्ति के रूप में आवेदकगण से 4,00,000 रू. प्राप्त करने का हकदार है?
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> 4. अनुतोष ?"

After taking evidence and hearing the parties, the Tribunal proceeded to find in issue No.1 on the basis of post mortem report that deceased was 60 years in age at the time of accident. In issue No.2 the Tribunal found that the deceased met with his untimely end by rash and negligent driving of the aforesaid jeep bearing registration No. RJE 711.

Taking up quantification of compensation, the Tribunal observed that the claimants were two grown up sons of the deceased and one of them was employed in a factory and it would not be proper to consider them dependents of the deceased; that the agricultural land was available with them and flourmill business was continuing; that no cogent evidence was produced in relation to the income of the deceased and, therefore, it would be proper to assess his income at Rs.6,000/- per annum. The Tribunal then referred to the longevity expectation in the family and observed that at the most it could be believed that the claimants were deprived of love and affection of their father and probably some part of flourmill income was receded and, therefore, the amount of Rs.25,000/- received by them under no fault liability was sufficient and no further amount was required to be awarded. The Tribunal, however, allowed Rs.300/- towards costs of litigation.

Having examined the impugned award and the evidence available on record, this Court is satisfied that the award on its quantification of compensation remains grossly inadequate and deserves suitable modification.

So far the age of the deceased is concerned, claimants have stated his age at 55 years and their own age at 35 years and 30 years respectively. The post mortem report has put the age of deceased at 60 years. There being no other evidence available on record, in the totality of the circumstances, it appears appropriate to estimate the age of deceased in the age group of 55-60 years.

So far the loss of contribution to the claimants is concerned, the claimants have stated agriculture income of the deceased from 15 bighas of land at about Rs.25,000/- per annum and have further asserted his income at about Rs.6,000/- per annum from a flourmill. Though it is true that the agricultural land and the flourmill continue to remain available to the claimants, however, that does not mean that the generation of income by the deceased by putting his labour in the agriculture and so also in the flourmill; and the resultant loss of contribution on his accidental death be ignored altogether. A part of income, and in this case for that matter a substantial part of income, might be considered retaining itself to the claimants but still, the loss, particularly

that arising out of erosion of income earned by the efforts of the deceased, cannot be ignored.

Having regard to the circumstances of the case, it is considered appropriate to put an estimate of loss of contribution for the claimants minimum at Rs.6,000/- per annum and there appears no reason to deny them compensation on this basis. In view of the age of the deceased and the claimants, a multiplier of 8 could be applied to a multiplicand of Rs.6,000/- per annum to assess pecuniary loss in the sum of Rs.48,000/-. The claimants, sons of deceased having been deprived of love and affection and guidance of their father deserve to be allowed Rs.5,000/- each towards non-pecuniary loss and another Rs.2,000/- towards funeral expenses. In this manner, the claimants are entitled for compensation minimum at Rs.60,000/-. The Tribunal has not been justified in restricting the award in the meager sum of Rs.25,000/-.

The accident occurred on 17.09.1990 and the claim application was filed on 20.11.1990. In the overall facts and circumstances of the case, the claimants deserve to be allowed interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of claim application.

As a result of the aforesaid, this appeal succeeds and is partly allowed. The claimants are allowed compensation in the

sum of Rs.60,000/- in place of Rs.25,000/- allowed by the Tribunal. The claimants shall, therefore, be entitled for further compensation in the sum of Rs.35,000/- and on this enhanced amount shall be entitled to interest at the rate of 7.5% per annum from the date of filing of claim application.

It shall be required of the respondent-insurer to deposit the amount payable under the modified award within 30 days from today with the Tribunal. Upon deposit, the amount be apportioned equally between the two claimants and for each of them, half of the amount be kept in Monthly Income Scheme of Post Office for minimum period of five years with the claimants being entitled to receive periodical interest thereupon. Remaining amount be paid cash to each of the claimants. Parties are left to bear their own costs of this appeal.

(DINESH MAHESHWARI),J.

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